IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 661 70-11

CHEVRON OIL COMPANY,

Petitioner,

versus

GAINES TED HUSON,

Respondent.

RESPONSE TO PETITION FOR CERTIORARI BY AND ON BEHALF OF GAINES TED HUSON

SAMUEL C. GAINSBURGH
1718 Nat. Bank of Commerce Bldg.
New Orleans, Louisiana 70112
ATTORNEY FOR RESPONDENT,
GAINES TED HUSON

Of Counsel:
KIERR and GAINSBURGH
New Orleans, Louisiana

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May it please the Court:

In response to the petition for certiorari filed herein, Respondent, Gaines T. Huson, respectfully submits that:

1. The Court of Appeals for the Fifth Circuit correctly held that this personal injury action was not time-barred by a Louisiana statute of limitation that was not applicable to this claim either at the time Respondent was injured or at the time he instituted suit against Petitioner;

and

2. The Court of Appeals for the Fifth Circuit correctly held that Petitioner is not en-

titled to a day in Court on the non-asserted defense of *laches*.

1.

Respondent was injured aboard a fixed offshore platform in the Gulf of Mexico on the 17th day of December, 1965. For at least four years *before* Respondent's claim arose the jurisprudence had held consistently that the rights and remedies of offshore fixed platform injury victims were to be governed by the general maritime law of the United States,[1] by virtue of which the timeliness of actions has always been determined via the equitable doctrine of *laches*.[2] This action was instituted on January 4, 1968, and was actively prepared for trial by the parties without hint or suggestion by Petitioner that the suit was either "stale" or otherwise time-barred. Only after this Honorable Court's decision in *Rodrigue*,[3] some eighteen months after suit was filed, did Petitioner move for and obtain dismissal of the case on the ground that it was "prescribed" under Louisiana law.[4]

It is axiomatic that "ignorance of the law is no

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[1]Pure Oil Co. v. Snipes, 293 F. 2d 60 (CCA 5, 1961); Flowers v. Savannah Machine & Foundry Co., 310 F. 2d 135, 139 (CCA 5, 1962); Movible Offshore Co. v. Oursley, 346 F. 2d 870, 873 (CCA 5, 1965); Loffland Bros. Co. v. Roberts, 386 F. 2d 540, 545 (CCA 5, 1967).

[2]Gilmore & Black, The Law of Admiralty, p. 296, note 149.

[3]Rodrigue v. Aetna Cas. & Surety Co., 395 U.S. 352, 23 L.Ed. 2d 360, 89 S.Ct. 1835 (1969).

[4]Petition, pp. 20-21; *Rodrigue* was decided June 9, 1969, the Dist. Ct. dismissed this action on July 23, 1969.

excuse."[5] But, the truth is the law that Respondent is *presumed* to have known did *not* require that he file his suit within the time set forth by the law of Louisiana, or of any other state.[6]

Assuming, *arguendo*, that *Rodrigue* commands application of the varied limitation statutes[7] of the "adjacent" states to fixed platform injury victims from various states,[8] Respondent forcefully urges that even this result should obtain only *prospectively*.

> Last Term, Your Honors said:
> "Where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity."[9]

It is difficult to imagine a more unjust or harsh result than the one for which Petitioner contends in this case. In refusing to impose such a burden on this Re-

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[5]See West v. Upper Miss. Towing Corp., 221 F.Supp. 590 (D.Minn., 1963) and Morales v. Moore-McCormack Lines, 208 F. 2d 218, 221 (CCA 5, 1953).

[6]Pure Oil v. Snipes, Movible Offshore Co. v. Oursley and Loffland Bros. Co. v. Roberts, supra, n.1.

[7]Mississippi, 6 years; Texas, 2 years; Alabama, 1 year for injury, 2 years for death; Florida, 4 years for injury, 2 years for death; Louisiana, 1 year.

[8]See Time Magazine, March 1, 1971, p. 16; Appendix "A" which clearly indicates that platform workers are not typically all from *the* "adjacent" state.

[9]Cipriano v. City of Houma, 395 U.S. 701, 23 L.Ed. 2d 647, 89 S.Ct. 1897 (1969); Linkletter v. Walker, 381 U.S. 618, 14 L.Ed. 2d 601, 85 S.Ct. 1731 (1965).

spondent, the judgment of the Court of Appeals is correct and it should not be disturbed.

Respondent further submits that the *rationale* of *Rodrigue* does not require even the prospective imposition of inflexible statutes of limitation upon the victims of offshore platform accidents.

In Louisiana, as elsewhere, the time limitation within which suit must be filed in injury cases is *procedural*, not substantive.[10] Purely procedural provisions of state law may be, and have been, ignored in favor of "federal common law" or statutory rules, although this results in the survival of an action that would be time-barred under the state's procedural rules, even in "diversity" cases,[11] which this is not.

In *Rodrigue*, Your Honors observed:

> "The purpose of the Outer Continental Shelf Lands Act was to define a body of law applicable to the seabed, the subsoil, and the fixed structures such as those in question here on the outer Continental Shelf. That this law was to be *federal* law of the United States, applying *state law only as federal law* and then only when not inconsistent with appli-

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[10] Newman v. Eldridge, 107 La. 315, 31 So. 688 (1902); Beyer Transp. Co. v. Whiteman Contracting Co., 187 So. 143 (La.App., 1939).

[11] Levinson v. Deupree, 345 U.S. 648, 73 S.Ct. 914, 97 L.Ed. 1319 (1953).

cable federal law, is made clear by the language of the Act.[12] [Emphasis added.]

It seems clear that the District Court in the instant case was a *federal forum,* not "just another Court of the state" in which it sits. Under Louisiana law, as has been mentioned, prescription being procedural, the timeliness of suit is determined by the law of the *forum,* irrespective of the jurisdiction from which the substantive rights emanate.[13] Therefore, the District Court in the instant case was not *bound* to apply Louisiana's mechanical one-year limitation period to the instant claim. In holding that, as a matter of *federal* policy, it should not have done so, Respondent submits that the Court of Appeals was acting within its prerogative of declaring what the *federal* law should be in the cases of this nature. That its choice may have been influenced by its apparent knowledge of the undeniable maritime characteristics[14] of these Congressionally-declared non-maritime premises is, we submit, not improper, and should not be disturbed.

2.

As has been previously mentioned, Petitioner at no time suggested during the pendency of this action in the District Court that it was "stale" or that it was barred by *laches,* although it is presumed to have known that such a defense was available even before *Rodrigue* was decided.

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[12]395 U.S. 355-356.
[13]Supra, n. 10.
[14]See Appendix "A"

Though perhaps not articulated in the Court of Appeals' opinion, the basis for the Court's holding that Respondent's claim is *not* barred by *laches* is the patent absence of one of the essential elements of that defense: *inexcusable* delay in bringing suit.[15] If the "delay" in filing suit is "excusable," *laches* does not accrue, as a matter of law.[16]

When this action was instituted, it was in no way untimely, unless one imputes greater clairvoyance to Respondent and his counsel than was possessed by the Judges of the Court of Appeals for the Fifth Circuit in *Snipes, Oursley, Roberts*[17] and *Dore*.[18]

Laches is an equitable doctrine, not made up of *ex post facto* considerations that would be implicit in holding delay that was "excusable" when suit was filed to be inexcusable a year and a half thereafter. *Laches* is concerned with the *effects* of delay, not the fact of it,[19] and Petitioner has never demonstrated the slightest disadvantage to which it might even remotely have been subjected by reason of the fact that Respondent did not file this action sooner than he did. Indeed, were it not for Respondent's "delay" in filing suit, it is not improbable that this litigation would

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[15]Crews v. Arundel Corp., 386 F. 2d 528 (CCA 5, 1967); Fidelity & Guaranty Co. of N.Y. v. C/B Mr. Kim, 345 F. 2d 45 (CCA 5, 1965); Akers v. States Marine Lines, Inc., 344 F. 2d 217 (CCA 5, 1965).

[16]Crews v. Arundel Corp., supra, 386 F. 2d at p. 531.

[17]Supra, n. 1.

[18]Dore v. Link Belt Co., 391 F. 2d 671 (CCA 5, 1968), reversed sub nom, Rodrigue v. Aetna Cas. & Surety Co., supra, n. 3.

[19]30A C.J.S., Equity, §112, pp. 25-26.

have been over and done with before *Rodrigue* descended upon us.

The holding of the Court of Appeals that Respondent's claim is not, and could not be, barred by *laches* is both equitably and legally correct and this petition for a writ of certiorari should be denied.

Respectfully submitted,

Samuel C. Gainsburgh
1718 Nat. Bank of Commerce Bldg.
New Orleans, Louisiana 70112
ATTORNEY FOR RESPONDENT,
GAINES TED HUSON

Of Counsel:
KIERR and GAINSBURGH
New Orleans, Louisiana

CERTIFICATE

I, the undersigned member of the Bar of this Court, do hereby certify that two copies of the above and foregoing Response to the Petition for Certiorari have been served upon Lloyd C. Melancon, Esq., 720 Hibernia Bank Building, New Orleans, Louisiana 70112, by mailing the same to his offices, postage prepaid, from New Orleans, Louisiana, this ____ day of March, 1971.

Samuel C. Gainsburgh

AMERICAN SCENE

Oilmen at Sea: Life on South Marsh Island 73

Like stark sentinels, they loom high above the ocean waters, seeming in storm and mist to have been there nearly as long as the sea. They are the thousands of offshore oil platforms that dot the continental shelf of North America. They are the hostile homes of the offshore oil workers, a very tough and particular breed of men. Houston Bureau Chief Leo Janos went to live among them for a time on a platform off the Gulf Coast of Louisiana. His report:

FOR the 42 men who work a 12-hr. shift on it each day, the 20-storied South Marsh Island 73—one of 6,300 oil platforms and drilling rigs stretched across the coastal gulf—is both a punisher and a provider, a harsh, demanding and dangerous mistress. And yet the island gives as awesomely as it takes. Located 103 miles offshore, its pipelines stretch thousands of yards across the ocean floor. Drawing from seven big reservoirs 7,000 ft. beneath the primordial ooze of the gulf, it can pump 28,000 bbl. of crude oil to the mainland each day through its 7-in. pipeline.

South Marsh Island 73's heartbeat is a powerful oil drill rotating 140 r.p.m., pushing 200,000 lbs. of pipe with 4,000 lbs. of pressure. There is an omnipresence about its throb and its beat, shaking the two-storied concrete bunkers the men live in, even as they sleep. It rarely ceases. "Ain't enough wind or rain, ice or fog to ever stop that son of a bitch," one crewman observes with grudging respect.

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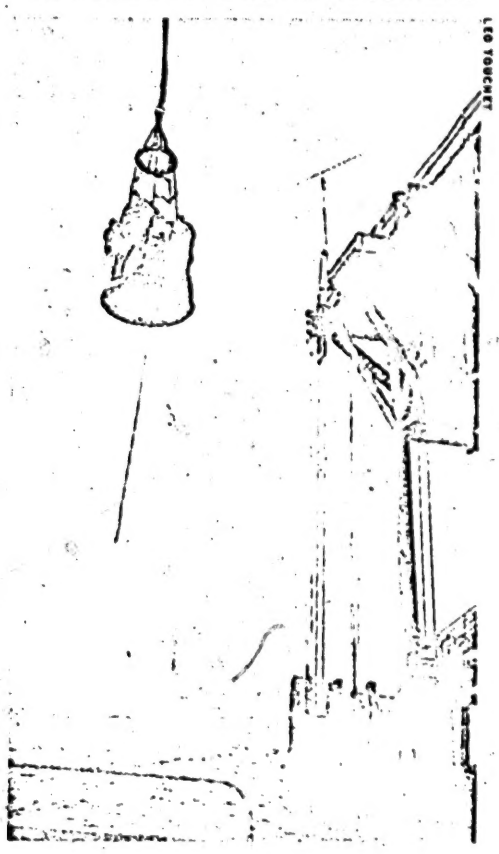
For the unskilled half of the crew, most of whom are Louisiana Cajuns and Mississippi farmers, life on the impregnable, womanless island becomes a monotonous cycle of dirt, grease, curses and the knowledge that tomorrow will be more of the same. The men, known as roustabouts, work and sleep 14 days at a time on the platform before they get a week's rest on shore. They are tired of this life. Many would like to quit. But they cannot. They find themselves trapped by the realization that however torturous the job is, the money is good, better than they could make anywhere else with their meager education, and that the poverty they come from is even more oppressive. So they stay, breaking their backs for $2.50 an hour, dragging 300-lb. sections of pipe and stacking endless 100-lb. sacks of chemical mud.

Roustabouts or technicians, all are effectively imprisoned on their tight little island. No alcohol, not even beer, is permitted on board. Fighting means immediate dismissal; lateness to a post a severe reprimand. Always, the threat of death or serious injury is with the crew. Two months ago, about 100 miles away on the gulf, a fiery blowout on one platform killed six men and destroyed 20 operating wells. Several veteran roustabouts have fingers missing from accidents. Last September, a roustabout was killed when a 600-lb. section of pipe fell and crushed his skull.

OIL WORKERS BEING HOISTED TO PLATFORM



LEO TOUCHET

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"I never realized that human beings could work this hard," says James McAlister, 22, a Belfast-born roustabout who fled the religious wars of home. "At 6 in the morning, it's dark, wet and cold. You begin sweeping the water from the deck that accumulates from the night's mists. The deck must be kept dry so that the men don't slip and fall. Everything is steel, so a fall can really do damage. Whatever you do, you get filthy. Your hands, your face, your shoes, trousers and shirt become smeared with grease, rust and mud chemicals. I never knew 14 days could take so long." Smiley Dunaway, 55, from Columbia, Miss., who has worked as a roustabout for 20 years, put two boys through college on his earnings. "But it cost me two-thirds of my life on the gulf to do it," he says wistfully.

After work, the men take hot showers, chuck their dirty clothes into washing machines and take off for the chow hall. There are separate menus for the two prevailing cultures on board. The Cajuns get their rice, beans and gumbo and the Mississippians their ham, greens and potatoes. Then they talk sex, watch television or play a Cajun card game called Bourée (pronounced boo-ray). To a visitor, there seems a relaxed camaraderie aboard, as though the men had achieved a kind of brotherhood through suffering. Still, there is no desire by the men to see their experience repeated, particularly in their families.

In the mess hall, a young, rawboned roustabout drains his coffee cup, zips up his waterproof jacket and stands, listening briefly for the fickle north wind that whips cruelly across the gulf this time of year. Then he sighs: "Well, I guess it's time to feed my young'uns." Somehow his words sound like a motto for the offshore oilmen.